

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, January 23, 2013, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Leirion Gaylor Baird, Michael Cornelius, Tracy Corr, Wendy Francis, Chris Hove, Jeanelle Lust, Dennis Scheer, Lynn Sunderman and Ken Weber; Marvin Krout, Steve Henrichsen, Tom Cajka, Paul Barnes, Brandon Garrett, Jean Preister and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Michael Cornelius called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Cornelius requested a motion approving the minutes for the regular meeting held January 9, 2013. Motion for approval made by Francis, seconded by Gaylor Baird and carried 9-0: Gaylor Baird, Cornelius, Corr, Francis, Hove, Lust, Scheer, Sunderman and Weber voting 'yes'.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

January 23, 2013

Members present: Gaylor Baird, Cornelius, Corr, Francis, Hove, Lust, Scheer, Sunderman and Weber.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1584A.**

Ex Parte Communications: None

Item No. 1.1, Special Permit No. 1584A, was removed from the Consent Agenda and scheduled for separate public hearing.

COUNTY CHANGE OF ZONE NO. 12038
FROM AG AGRICULTURAL DISTRICT TO
AGR AGRICULTURAL RESIDENTIAL DISTRICT
ON PROPERTY GENERALLY LOCATED AT
N.W. 126TH STREET AND W. BLUFF ROAD.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 23, 2013

Members present: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius.

The Clerk announced that the applicant has requested an additional four-week deferral of the public hearing until February 20, 2013.

Lust moved to defer, with continued public hearing and action scheduled for February 20, 2013, seconded by Sunderman and carried 9-0: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius voting 'yes'.

SPECIAL PERMIT NO. 1584A
TO EXPAND AN EARLY CHILDHOOD CARE FACILITY
ON PROPERTY LOCATED AT 1400 S.W. 22ND STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 23, 2013

Members present: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius.

There were no ex parte communications disclosed.

Staff recommendation: Conditional approval, as revised.

This application was removed from the Consent Agenda due to a revised staff recommendation.

Staff presentation: **Paul Barnes of Planning staff** explained that this is a request to amend the special permit located at 1400 SW 22nd Street. The applicant wants to add 600 sq. ft. to the existing facility to allow an additional 10 children and increase the number of staff from 5 to 8. This was removed from the Consent Agenda due to the original request being an increase up to 65 children and staff up to 9. After further discussion, the staff advised the applicant to amend the application to reflect the request to 60 children and 8 staff, respectively.

The applicant did not testify.

There was no testimony in support or opposition.

ACTION BY PLANNING COMMISSION:

January 23, 2013

Francis moved to approve the staff recommendation of conditional approval, as revised, seconded by Lust and carried 9-0: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

**COMPREHENSIVE PLAN CONFORMANCE NO. 12024,
AMENDMENT TO THE ANTELOPE VALLEY REDEVELOPMENT PLAN;**

and

**COMPREHENSIVE PLAN CONFORMANCE NO. 12023,
DECLARATION OF SURPLUS PROPERTY;**

and

**STREET & ALLEY VACATION NO. 12011,
ON PROPERTY GENERALLY LOCATED AT
18TH & Q STREETS.**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 23, 2013

Members present: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius.

There were no ex parte communications disclosed.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the amendment to the Antelope Valley Redevelopment Plan and declaration of surplus property, and a finding of conformance with the Comprehensive Plan on a portion of the requested street vacation, excluding Q Street and R Street.

Staff presentation:

1. Dallas McGee of the City Urban Development Department discussed all three proposals. The original Antelope Valley Redevelopment Plan was first approved in 2004. It has been amended seven times since 2004, and this would be an eighth amendment to that plan.

This amendment includes a block that was originally adjacent to the redevelopment plan area but was not included because it was University-owned and it was believed that the University (UNL) would develop it for parking facilities on their own. The University did approve the construction of a parking garage on this site; however, they then received interest and decided to see if there was official interest and prepared a request for proposal to partner with a private developer to make this a mixed use project as opposed to just a parking garage. The America First Company was selected as the developer and they are proposing a mixed use development including 124 units of

housing and additional parking that would not only serve UNL, but also the housing that would be built on the site.

McGee advised that with this public/private partnership there is interest on the part of the developer to utilize tax increment financing (TIF) to assist in some of the public improvements and enhancements. In order to do that, the area needed to be declared blighted and substandard, which blight designation was just recently approved by the City Council. The second step is to do a redevelopment plan that identifies, in general, the kind of development that will take place. In general, the proposed development is 1600 parking stalls and 124 residential units in a 10-story building. TIF would be used to assist in public improvements and public enhancements to facilitate the development. It is on a fast track. It needs to be constructed and open in about 18 months in August 2014.

McGee then addressed the request for surplus designation. The City happens to own a parcel on the block in question on the southwest corner, which is currently used by Lincoln Fire and Rescue for parking. Discussions are underway with UNL to provide parking in the University garage located just to the west for both temporary and permanent replacement parking for Lincoln Fire and Rescue.

With regard to the request to vacate certain rights-of-way, McGee pointed out that 18th Street is recommended to be vacated in its entirety so that the garage can be moved further to the west, allowing more open space and a more landscaped front yard on Antelope Valley Parkway. The vacation request also includes the vacation of a strip on both the north side on R Street and the south side on Q Street for footings. The developer and staff have had discussions as recently as this morning, and he believes that there may be some alternatives to the portion of the vacation to which the staff report recommends denial.

2. Tom Cajka of Planning staff addressed the street vacation and submitted a proposed amendment to the conditions, whereby the two existing conditions numbered 1.3 would be deleted and replaced with the following:

- 1.3 If the City Council approves the vacation request for "Q" and "R" Streets, provide a public access easement over the vacated "Q" Street, "R" Street and that portion of N. 18th Street that is paved, or in the alternative, grant an easement to applicant to facilitate footings in the right-of-way subject to conditions acceptable to the City Council.

Cajka explained that the request is to vacate all of 18th Street between Q and R Streets, and then a 4' strip from Antelope Valley Parkway to the west right-of-way line of 18th Street along both Q and R Streets. The 4' strip has to do with the footings that encroach into Q and R Streets and the right-of-way line.

Cornelius inquired whether the staff recommendation is still denial to vacate Q and R Streets with the new language. Cajka stated that the new language provides some alternatives, such as an easement as opposed to vacation.

Lust inquired whether Public Works has approved the new condition, or are they still in opposition? **Dennis Bartels of Public Works** stated that Public Works is agreeing to negotiate between now and the City Council meeting. We don't have all of the details today. It appears that Public Works might prefer the easement as opposed to a vacation, but they anticipate being able to work it out. Lust wondered whether Bartels would recommend that the action by the Planning Commission be denial of the vacation. Bartels believes that the developer's representative will have some suggestions on alternatives so that the Planning Commission could approve a couple alternatives that accomplish the same thing. He indicated that Public Works is in agreement with the alternatives, but the details need to be negotiated.

Scheer inquired as to the clear distance from finished grade to top of pile caps. Bartels stated that has not been provided to Public Works. He went on to state that it violates the International Building Code because of the pile caps and that is his understanding of the request for the 4' vacations.

Gaylor Baird believes this is an exciting project because the Planning Commission spent a lot of time on the 2040 Comprehensive Plan promoting mixed use development, creating housing, public/private partnerships, more efficient use of land, higher density, etc. She was curious whether there would be retail or commercial on the street level or whether it would just be a parking lot. In other parts of Downtown, where we have a ground floor parking lot, we end up with these "dead zones" where there is nothing for the pedestrian. Is that what we are going to see here? Will we see a dead zone or ground floor businesses? McGee stated that there will be residential on the ground floor on two sides – R Street and Antelope Valley Parkway. However, on Q Street and on 18th Street, it will be parking at the ground level. Residential or some other uses on Q Street were discussed, but it was believed that that was not the feasible location for either the residential or the retail. Urban Development is very happy to see the mixed use and the residential on two sides of the building. There are a lot of other amenities that can be provided as well.

Proponents

1. **Tom Huston**, 233 S. 13th Street, Suite 1900, appeared on behalf of **America First Real Estate Group**, in support of the amendment to the redevelopment plan, the declaration of surplus property and the entire street vacation request. The University recognized an opportunity with this project. As opposed to just building a typical parking garage, they had an opportunity to do something different and solicited proposals from developers to do this mixed use project. He believes this provides an opportunity for

the City to make a 100-year decision to deal appropriately with the development along and adjacent to Antelope Valley Parkway.

Huston acknowledged that this does involve increasing density, it does involve redevelopment in the built environment with a mixed use facility and it does engender sustainable development because of the environmental enhancements.

Huston stated that the only real issue with staff is the vacation. UNL needs a new parking garage with not less than 1,270 stalls because UNL has to provide resident parking for its new student housing across R street to the north. This will be a 10-story structure so there are footings and foundation needs. Huston agreed with the revised language submitted for Condition #1.3 of the street vacation request, and he requested that the vacation be approved subject to the revised conditions. The developer will work with staff to see if the issue can be addressed through an easement as opposed to vacation. The only code mechanism we currently have in the City is the vacation of the right-of-way.

Huston further explained that there will be 124 dwelling units, described as “The Wrap Project”, designed to encompass the facility being constructed. There will be 4-story residential on the east and north, and 3-story residential structure on the roof with a green roof courtyard area. They are still designing the area along Q Street to make it much more pedestrian friendly with additional landscaping and public art areas.

Huston observed that this project is unique because of the design and the structure. In moving this facility away from Antelope Valley Parkway, they have created a lot more opportunity for public art and gathering space along the parkway itself.

Huston then observed that when we undertook the 2040 Comprehensive Plan, we were trying to encourage the removal of barriers for redevelopment. He does not believe the footing issue requires any code changes because it is not often that we have a private developer building a parking garage. The Board of Regents would be the recipient of the vacated right-of-way and will hold title. His client has a ground lease with UNL. They will use that ground lease and condo the facility to allow the different types of uses. Huston believes they can work with Public Works between now and City Council to answer the questions that need to be answered regarding the footings.

Huston pointed out that the 2040 Comprehensive Plan encourages this type of mixed use development, and specifically encourages high density development on the “upper floors of multi-use parking structures”. The only issue is subgrade footings.

Gaylor Baird inquired what language Huston would like used for the footings issue. Huston suggested that the language provided by staff for a new Condition #1.3 replacing the existing two conditions numbered 1.3 would be appropriate and agreeable to his client.

Hove inquired whether the property will be on the tax rolls. Huston responded, yes, except it will be owned by the Board of Regents. The parking stalls will not be taxable, but the balance of the development will.

There was no testimony in opposition.

Scheer suggested that the footings issue is not an infrequent issue. This issue has come up with just about every parking garage in West Haymarket. It came up on Block 38 and Landmark 3. He wants to make sure that the Commission understands any kind of precedence that might occur with this. Does this need to be addressed permanently? Bartels generally agreed that the issue does come up, and agreed that there needs to be a good policy as to how to handle these situations. The Downtown Design Standards require buildings on property lines so this issue is going to come up. We do need to address it make sure everyone knows about it ahead of time. Scheer inquired whether the proposed language gets Public Works to a comfort level for this situation, and then does this in any way hurt any kind of future effort to deal with this in a long term situation? Bartels believes they can come to a solution on this project. Public Works is certainly not against this project. But he totally agrees that some ground rules would be helpful.

Corr asked McGee whether Lincoln Fire and Rescue is comfortable with this new parking situation and will they have enough parking? McGee stated that they have talked conceptually about replacing the parking they have in the garage that exists today. He thinks they are comfortable depending upon it being gated and exclusive to their use. They are talking about placing the trailers across the street on the Fire and Rescue site. They have had those discussions with UNL but they do not have the details worked out; however, McGee does believe that Lincoln Fire and Rescue is comfortable with the concept. Currently, there are 30 parking stalls on the site owned by the City. Lincoln Fire and Rescue has requested 51, and that is part of what is being discussed now. Corr inquired whether the City will have to pay rent on those stalls. McGee stated that the intent is that the City would provide the land to them and they would provide replacement parking that meets the City's needs. Those are the discussions underway.

COMPREHENSIVE PLAN CONFORMANCE NO. 12024**ACTION BY PLANNING COMMISSION:**

January 23, 2013

Gaylor Baird moved to approve a finding of conformance with the Comprehensive Plan, seconded by Francis.

Gaylor Baird commented that this is a mixed use redevelopment project in the greater Downtown area that creates housing opportunity; it utilizes land more efficiently; it is a public/private partnership; it is clearly in sync with the Comprehensive Plan in making it aesthetically pleasing with the ground level; they have taken steps to provide art and

greenscapes; and this is increasing the property tax base. It seems in perfect conformance with the Comprehensive Plan.

Motion carried 9-0: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius voting 'yes'. This is a recommendation to the City Council.

COMPREHENSIVE PLAN CONFORMANCE NO. 12023

ACTION BY PLANNING COMMISSION:

January 23, 2013

Lust moved to approve a finding of conformance with the Comprehensive Plan, seconded by Francis

Cornelius commented that the Commission has heard that there are measures and negotiations underway to make sure all of the uses of the public land are compensated for.

Motion carried 9-0: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius voting 'yes'. This is a recommendation to the City Council.

STREET & ALLEY VACATION NO. 12011

ACTION BY PLANNING COMMISSION:

January 23, 2013

Lust moved to approve a finding of conformance with the Comprehensive Plan, with conditions as revised, deleting the two conditions numbered 1.3 and adding the new Condition #1.3 as presented by staff, seconded by Hove.

Regarding the amendments and the recommendation for denial of a portion of the street vacation, Cornelius believes what the Commission has heard is that the parties involved are all reasonably comfortable with the new language, and that the new language leaves some room for the City to manage the creation of this easement and the potential vacation (or not) of Q and R Streets.

Motion carried 9-0: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 12037
FROM P PUBLIC USE DISTRICT TO
B-4 LINCOLN CENTER BUSINESS DISTRICT AND
I-1 INDUSTRIAL DISTRICT; AND FROM
B-4 LINCOLN CENTER BUSINESS DISTRICT,
R-4 RESIDENTIAL DISTRICT, R-6 RESIDENTIAL DISTRICT,
I-1 INDUSTRIAL DISTRICT AND H-3 HIGHWAY COMMERCIAL DISTRICT
TO P PUBLIC USE DISTRICT, ON PROPERTY GENERALLY
BOUNDED BY CORNHUSKER HIGHWAY TO P STREET
AND NORTH 10TH STREET TO NORTH 23RD STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 23, 2013

Members present: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius.

There were no ex parte communications disclosed.

Staff recommendation: Approval, as revised, removing one parcel from the change of zone request.

Staff presentation: **Paul Barnes of Planning staff** advised that the actual area covered in this change of zone request is about 74 acres. Most of these changes address land that is publicly owned and used and therefore should be zoned P Public Use. The ownerships for the most part include the City, the University of Nebraska-Lincoln (UNL) and the Lower Platte South NRD. There is a small portion that is privately owned by the Assurity Company at the northern tip of their property, which is proposed to be zoned B-4.

Barnes advised that the original change of zone request has been revised. One parcel has been withdrawn from the application. The staff did have communication with UNL after receiving opposition from an individual and the subject parcel was removed from the change of zone application at the request of UNL.

The Assurity property is the only privately owned parcel included in this application. A lot of this has to do with the Antelope Valley Parkway project with the street construction. This is an effort to clean up the zoning to accurately reflect ownership and use.

Francis asked Barnes to talk about the correspondence from Mary Collier in regard to use of property lying adjacent to her property at 708 N. 22nd Street. Barnes advised that the communication was forwarded to the Planning Commission members as well as UNL. The City Law Department advises that the issue is a private matter between Ms. Collier and UNL. Therefore, the outcome of that communication was to remove that parcel from this application to allow UNL and Ms. Collier to resolve their issues.

Support

1. **Tom Huston**, 233 S. 13th, testified in support because this change of zone includes a property at 18th & R which is currently zoned P and needs to be zoned B-4 for “The Warp Project” at 18th & Q Streets.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

January 23, 2013

Francis moved approval, as revised, seconded by Lust.

Cornelius commented that this is largely a cleaning up of the current land use versus the zoning map, and with removal of the parcel where the ownership is in dispute, it is a straight forward application.

Motion for approval, as revised, carried 9-0: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius voting ‘yes’. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 12040
FROM R-2 RESIDENTIAL DISTRICT TO
B-1 LOCAL BUSINESS DISTRICT
and
SPECIAL PERMIT NO. 12040
FOR AN OUTDOOR AREA FOR 3 OR LESS ANIMALS
ASSOCIATED WITH A VETERINARY FACILITY
ON PROPERTY GENERALLY LOCATED
AT NORTH 14TH STREET AND KNOX STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 23, 2013

Members present: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius.

There were no ex parte communications disclosed.

Staff recommendation: Approval of the change of zone request, subject to a conditional zoning agreement, as revised; and conditional approval of the special permit.

Staff presentation: **Tom Cajka of Planning staff** submitted an amendment to Condition #1.a. for the conditional zoning agreement limiting the use of the property as follows:

- 1.a. limit use of the property to ~~permitted uses in R-2 district, office, use and veterinary facility only~~ and those B-1 uses allowed in the R-2 District.

This application is for a change of zone from R-2 to B-1. B-1 is a Local Business District. The intent of the application is to locate a veterinary facility on the property, which was previously used as a nursing home by special permit in the R-2 District. The property is now vacant. H-3 Highway Commercial zoning abuts to the south; there are apartments to the east in R-2 through a special permit for a community unit plan; there is single-family housing on the west side of 14th Street; and Belmont Elementary school to the north.

Cajka stated that Planning staff is recommending approval of the change of zone with a zoning agreement. The zoning agreement would only allow the veterinary facility, offices or those B-1 uses allowed in the R-2 district. Planning staff believes the B-1 makes a good reuse of the existing building and provides a buffer between the heavier commercial in H-3 and the residential to the north. Other transition districts such as R-T would be appropriate; however, R-T does not allow veterinary facilities.

Cajka further advised that a veterinary facility is allowed as a conditional use in the B-1 district; however, any outdoor area has to be at least 200' away from a residential district. Therefore, the associated special permit is to allow an outdoor area for no more than three animals closer than 200' to residential because the outdoor area will be fairly close to the residential district.

Cornelius inquired whether the buildings on the residential side are garages or apartments. Cajka stated that the buildings on the lot line are garages.

Cajka also clarified that the distance between the outdoor area to the lot line is 37 feet; however, the distance to the nearest apartment building is approximately 125 feet. The condition requires that there be no more than three animals outside at one time. The staff supports this special permit because it is 125 feet to the nearest apartment building plus only 3 animals outdoors at any one time would not be any noisier than a lot of people have in a residential neighborhood with their dogs outside.

Proponents

1. Derek Zimmerman, of Baylor Evnen, 1248 O Street, Suite 600, testified on behalf of the applicant. He expressed appreciation to the staff for working with the applicant and the applicant agrees with the conditions in the staff report, including the amendment submitted today.

Zimmerman advised that the prior nursing home facility ceased operation in July of 2011, and has not been in use since that time.

Francis inquired about the hours of operations. Zimmerman explained that it will be an emergency veterinary facility so it does have the possibility of being open 24 hours. This was discussed with staff and in terms of traffic, it has been determined that it will have no more impact than the prior use.

If 24-hour use, Corr assumes someone will be there supervising the animals 24 hours-a-day. Zimmerman agreed. There will be someone there at all times.

There was no testimony in opposition.

CHANGE OF ZONE NO. 12040

ACTION BY PLANNING COMMISSION:

January 23, 2013

Hove moved approval, subject to the conditional zoning agreement, as revised, seconded by Francis.

Cornelius is in agreement with staff that the B-1 is a district that makes sense in this location, and with the zoning agreement, particularly the limitations on the use of the land, it makes a good deal of sense and allows for the use of the existing structure.

Motion carried 9-0: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius voting 'yes'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 12040

ACTION BY PLANNING COMMISSION:

January 23, 2013

Francis moved to approve the staff recommendation of conditional approval, seconded by Hove.

Corr commented that she does not know how we are going to enforce the provision for three animals or less, but she does not believe it will be that much of a problem.

Francis suggested that the neighbors will take care of that.

Corr stated that she is happy to see something go in there rather than seeing this building deteriorate.

Cornelius agrees that the neighbors will likely and should report any problems as there are mechanisms for enforcement of the provisions of the special permit. The key provision is the change in the required distance and he concurs with staff that in conjunction with the actual distance from the residential use and the limitation on the number of animals involved, he believes the change from 200 to 125 feet is justifiable.

Motion for conditional approval carried 9-0: Francis, Sunderman, Lust, Weber, Scheer, Hove, Corr, Gaylor Baird and Cornelius voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

The Chair announced that the regularly scheduled meeting for Wednesday, February 6, 2013, has been canceled due to lack of agenda items.

There being no further business, the meeting was adjourned at 1:55 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on February 20, 2013.